

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassifications)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

To: The Commission

APPLICATION FOR REVIEW

The International Telecard Association ("ITA"), by its attorneys and pursuant to Section 5(c)(4) of the Communications Act, 47 U.S.C. § 155(c)(4), and Section 1.104(b) of the Commission's Rules, 47 C.F.R. §1.104(b), hereby submits this application for review by the full Commission of the March 9, 1998 Memorandum Opinion and Order (DA 98-481) adopted on delegated authority by the Common Carrier Bureau (the "Bureau") in this proceeding (the "Bureau Order" or "Second Bureau Waiver Order").

In support of this application, ITA states as follows:

INTRODUCTION

1. The Bureau Order denies ITA's petition for reconsideration of a waiver, granted in October 1997, affording payphone service providers ("PSPs") relief from the requirement, imposed by the Commission in its initial Order in this proceeding, to transmit accurate, payphone-specific coding digits.¹ The Bureau ruled that inter-exchange carriers ("IXCs"), including prepaid phonecard providers, are still liable for

¹ ITA's petition for partial reconsideration (filed Nov. 6, 1997), ITA's reply comments in opposition to the waivers (filed Nov. 6, 1997) and ITA's reply comments in support of its reconsideration petition (filed Jan. 23, 1998) are attached hereto.

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the Commission-mandated \$0.284 “default” per-call payphone compensation during the period of this waiver, on the ground that IXC’s would not be harmed by their inability to block payphone calls in real-time and could recover these costs by billing their customers. This rationale simply does not apply to prepaid card carriers, however, because these providers do not bill customers and only have one chance, during actual processing of a prepaid call, to recover such payphone fees from their customers.

2. The Bureau Order reaffirms the original waiver, and extends it for an additional five months or more, without ever addressing this uncontested difference between prepaid phonecard carriers and other IXC’s. As a result, the Bureau Order -- crafted behind closed doors with no opportunity for public comment -- will harm consumers, impede competition by prepaid phonecard services, and undermine the central justification of a market-based, “carrier-pays” system of payphone compensation. Prepaid phonecards are a highly price competitive and rapidly growing segment of the market, with special importance to low-income and minority end users. Without real-time access to accurate, payphone-specific coding digits, prepaid carriers will be forced to increase rates for all consumers, whether or not calls are made from payphones. Accordingly, ITA asks that the Commission reverse the Bureau Order, pursuant to Section 5(c)(6) of the Act, 47 U.S.C. § 155(c)(6), and relieve prepaid carriers from the obligation to remit payphone compensation to PSPs for payphones that, during the transitional period subject to the waiver, do not transmit payphone-specific coding digits.

BACKGROUND

3. The Bureau Order is based on self-evident logical and policy inconsistencies. The foundation of the Commission's market-based approach to payphone compensation is that unique "ANI II" digits identifying a call as originating from a payphone must be sent on each payphone call in order for a PSP to receive compensation. Nonetheless, the Bureau Order disregards this fundamental precept and undermines the Commission's rules and policies implementing Section 276² by requiring payphone compensation even when PSPs have not met their corresponding obligations.

4. The Bureau Order inflicts tremendous financial hardship, amounting to over \$60 million, on prepaid phone providers that they must either absorb or pass along to consumers who can ill-afford rate increases. Unlike most IXCs, which can recover their costs even in the absence of unique coding digits, without the ability to identify a payphone call in real time prepaid phone card providers have no way to recover payphone compensation amounts, unless they increase the rates on all calls:

[T]he inability to identify and/or block payphone calls, in real time, will significantly harm prepaid providers, impede competition in this burgeoning market, and injure consumers. Without the ability to identify payphone calls and recover PSP charges when a call is placed, prepaid providers will be forced either to (a) pay for such costs out of their already thin profit margins, or (b) increase rates for consumers of all

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20,541 (1996) ("Report and Order"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration") (together the "Payphone Orders"). The Payphone Orders were affirmed in part and vacated in part. See *Illinois Public Telecommun. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("Illinois Public Telecomm."). See also Second Report and Order, CC Docket 96-128, FCC 97-371 (rel. Oct. 9, 1997) ("Second Report and Order"), *pets. for recon. pending, review pending*, *MCI Telecomm. Corp. v. FCC*, No. 97-1675 (D.C. Cir. filed Nov. 7, 1997); *Sprint Corp. v. FCC*, D.C. Circuit No. 97-1685 (filed Nov. 13, 1997); *Personal Communications Industry Association v. FCC*, No. 97-1709 (D.C. Cir. filed Dec. 1, 1997); *Illinois Public Telecommunications Association v. FCC*, No. 97-1713 (D.C. Cir. filed Dec. 3, 1997).

prepaid calls, whether or not payphone-originated. Neither is in the public interest.

Reply Comments of ITA at 3 (filed Nov. 6, 1998). Confronted with this reality, although providers are loath to increase rates given the highly competitive nature of prepaid services, the Bureau Order will give many little or no choice but to do so. In addition to directly hurting consumers, rate increases will dramatically harm the attractiveness of prepaid phone cards as a competitive substitute to "1+" calling, calling cards and long-distance coin calls made from payphones.

5. Not only does the Bureau Order fail to appropriately balance industry interests, but the Bureau's procedures to develop the Order violate the Commission and Administrative Procedures Act ("APA") procedural safeguards and policies. In reaching most of its conclusions, the Bureau based its reasoning on ex parte presentations and released its Order the day the initial waiver expired. Thus, public comment was stymied and the specter of "back-room deals" between the Bureau, the RBOCs and other payphone providers permeates this process. Public participation was further limited because the Bureau granted a sweeping extended waiver based on petitions from one trade association, one small LEC and a letter from the "LEC ANI Coalition," without any opportunity for critique and public review of the important assumptions underlying extension of the coding-digit waiver.

DISCUSSION

6. Over the past two years, the Commission has grappled with promulgating regulations that would fairly and appropriately implement Section 276 of the Telecom-

munications Act.³ Throughout this process, the ITA has been an active participant in the proceeding,⁴ has consistently supported fair compensation of payphone providers and the Commission's "carrier-pays" methodology,⁵ and has emphasized the unique benefits of prepaid phone services.⁶

7. The Commission has attempted to balance industry needs and has taken into account the views of prepaid phone card providers.⁷ The same cannot be said with respect to the Common Carrier Bureau's actions addressing requests for waiver of the Commission requirement that beginning October 7, 1997, to be eligible for per-call compensation each payphone is required to transmit specific payphone coding digits. On the day the rule was to take effect, the Bureau, responding to last-minute waiver petitions, on its own motion granted a five-month waiver, until March 9, 1998, of the requirement "for those LECs and PSPs not yet able to provide transmission of such digits."⁸ The Bureau reasoned that PSPs should not be denied per-call compensation for an industry-wide LEC problem because a delay in requiring payphone-specific coding digits "will not significantly harm any parties."⁹

³ Section 276 requires that the Commission implement regulations to ensure that payphone providers are "fairly" compensated for completed calls from a payphone. 47 U.S.C. § 276(b)(1)(A).

⁴ See ITA Comments dated July 1, 1996; ITA Reply Comments dated July 15, 1996; ITA Comments on Remand Issues dated Aug. 26, 1997; ITA Reply Comments on Remand Issues dated Sept. 9, 1997.

⁵ See, e.g., ITA Comments of July 1, 1996 at 1; ITA Comments on Remand Issues dated Aug. 26, 1997 at 2.

⁶ ITA Comments of July 1, 1996 at 5-8.

⁷ For instance, the Commission's Report and Order agreed with ITA that calls are not "completed" for purposes of Section 276 until they reach the ultimate end user, not an intermediate toll-free access number.

⁸ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (released Oct. 7, 1997) ("First Bureau Waiver Order") at ¶ 8.

⁹ *Id.* at ¶ 12.

8. Subsequent to the this First Bureau Waiver Order, the Bureau sought comment on the waiver and (months later) on ITA's petition for partial reconsideration. Once again, the Bureau waited until the last minute to take action, and on March 9, 1998, the day the first waiver expired, issued the Bureau Order that extended and broadened the scope of the waivers, while denying ITA's reconsideration petition. The Bureau, however, never sought public comment on whether the First Bureau Waiver Order should be extended, and based its conclusions solely on several ex parte submissions by affected PSPs and LECs. And in the second Bureau Waiver Order, the subject of this application for review, the Bureau changed its reasoning, acknowledging harms to prepaid phonecard carriers. Nonetheless, the Bureau concluded -- with no supporting reasoning -- that "the potential harm from the absence of compensation to PSPs would be greater than the potential harm to . . . ITA, IXC's, and other payors from the inability to block payphone calls."¹⁰

I. THE BUREAU'S CODING DIGIT ORDERS ARE INTERNALLY INCONSISTENT, UNDERMINE COMMISSION POLICY AND IMPOSE UNFAIR AND SIGNIFICANT DISCRIMINATORY COSTS ON PREPAID PHONE CARD PROVIDERS

9. The Common Carrier Bureau's two coding digit orders are internally inconsistent and can not be reconciled with one another. In the October 1997 First Bureau Waiver Order, the Bureau granted a waiver of the coding digit requirement to "address the special circumstances that transmission of payphone-specific coding digits is not yet ready for implementation for certain phones,"¹¹ and supported its decision by

¹⁰ Second Bureau Waiver Order at ¶ 97.

¹¹ First Bureau Waiver Order at ¶ 10.

reasoning that the waiver would “not significantly harm any parties.”¹² Apparently realizing the errors of its previous order, the Bureau did not address harm to other parties in the March 1998 Second Bureau Waiver Order , but instead articulated an entirely new theory for the waivers. In denying ITA’s reconsideration petition, the Bureau acknowledged injury to phone card providers, but indicated that it was better to harm phone card providers rather than harm payphone providers because all IXCs had “notice” that they would be required to pay compensation to PSPs.¹³

10. Even if one can accept the conclusion (untenable as it is) that it may be “better” to harm prepaid phonecard providers instead of payphone operators, the reasoning of the two orders can not be harmonized. Given the Bureau’s rationale in the First Bureau Waiver Order that IXCs would not be “substantially harmed” by a waiver, a finding in the Second Bureau Waiver Order that some parties (prepaid carriers) would be hurt significantly should necessarily lead one to conclude that an extension should not be granted.¹⁴ This was not the case. Instead, the Bureau abandoned harms imposed on other parties as a factor to consider when granting the extension, and instead simply indicated that prepaid phone card providers should be harmed, so payphone providers would not be. (Conversely, the Bureau’s finding in Second Bureau Waiver Order that prepaid card providers would be harmed by extending the waivers contradicts the Bureau’s own finding in the First Bureau Waiver Order that no parties will be harmed.) Thus, the Second Bureau Order directly contradicts the findings in the original decision

¹² *Id.* at ¶12.

¹³ Second Bureau Waiver Order at ¶¶ 89, 97.

¹⁴ The Bureau also contradicts itself in finding that a waiver is needed because the absence of an extension would impose costs on LECs, while concluding that the imposition of corresponding costs on prepaid carriers during that same time period is immaterial.

and undermines the central justification supporting the grant of the waiver. While it is not entirely clear what the Bureau's basis for granting the waivers was, it is plain that one or both of the coding digit waiver orders is not based on sound logic and policy, and that the two are internally inconsistent.

11. Consistency and logic aside, the coding digit waiver orders directly undermine Commission policy. The Commission has stated that a fundamental aspect of its market-based approach to payphone compensation rules is the requirement that payphones provide unique ANI coding digits identifying calls as originating from payphones. The Commission established this requirement to promote payphone provider and IXC negotiations, and thus to facilitate market-driven prices for payphone compensation. Indeed, the central premise of a market-oriented approach to payphone compensation -- real negotiations between IXCs and PSPs -- is that IXCs can block payphone calls and, thus, avoid the compensation requirement in the first instance. In affirming the Commission's market-based scheme for payphone compensation, the Court of Appeals therefore emphasized that a "carrier pays" approach is reasonable because carriers will have the ability to "block calls from payphones with excessive per-call compensation charges."¹⁵ The Bureau undermines this policy by waiving the coding digit requirements for 25% of the payphones within GTE and SNET territories through the end of the year,¹⁶ by waiving the requirements for a significant number of RBOC payphones through the remainder of this year and beyond,¹⁷ by waiving the

¹⁵ *Illinois Public Telecom. Assoc.*, 17 F.3d at 566.

¹⁶ *Id.* at ¶ 71.

¹⁷ *Id.* In addition to a general waiver, the Bureau waived the requirement that LECs implement FLEX ANI on switches that will be replaced by October 6, 1999 because it is not cost effective for the LECs to do so. *Id.* at ¶ 80. There is no indication how many switches this waiver impacts.

coding digit requirements for ten years for small and midsize LECs,¹⁸ and by waiving the coding digit requirements indefinitely for other LECs.¹⁹

12. The Bureau lamely suggests that its waiver is really consistent with Commission policy. The Bureau contends that the availability of payphone-specific coding digits was “never a sin qua non for the payment of payphone compensation,” and that the interim compensation mechanism specifically recognized the need for a transitional scheme.²⁰ This contradicts the plain language of the Commission’s Reconsideration Order indicating that “[o]nce per call compensation becomes effective, we clarify that, to be eligible for such compensation, payphones will be required to transmit specific payphone coding digits as a part of their ANI.”²¹ And as noted, the existence of real-time information is key to the market negotiations that underlie the Court of Appeal’s affirmance of the Commission’s “carrier-pays” approach to payphone compensation. The waivers thus eviscerate the Commission’s central policy by delaying implementation of this rule for a significant number of payphones through the end of 1998, and in some cases indefinitely. There is no support whatever for the Bureau’s refusal to acknowledge that real-time ANI II digits are the quid pro quo for market-based payphone compensation rates.

13. Furthermore, the waivers provide no incentive for LECs to implement unique payphone coding digits. On the one hand, LECs are collecting additional revenue for their payphones, while on the other they are delaying network upgrades to provide unique payphone coding digits and saving money while imposing costs on

¹⁸ *Id.* at ¶ 76.

¹⁹ *Id.* at ¶ 78.

²⁰ *Id.* at ¶ 64.

competitors -- namely prepaid phone card providers --- who as a result of LEC failure to provide unique coding digits cannot recover payphone charges. It is no wonder that LECs have requested waivers of this requirement, and are likely to continue to do so under the LEC-friendly, "ask-and-we-shall-grant" approach to waivers adopted by the Bureau. It is clear that under the Bureau's coding digit waiver orders, there is simply no incentive for LECs to provide unique payphone coding digits. Thus, the Commission's policy and rules will not simply be set aside for a short transitional period, but may forever be disregarded by a significant number of LECs.

14. Adding insult to injury, the Bureau further attempts to justify denial of ITA's reconsideration petition by indicating that prepaid phonecard providers had "notice" of the fact that they would be required to compensate payphone providers.²² While it is true that prepaid carriers knew they would be required to compensate payphone providers, it is also true that, under the Commission's 1997 Report and Order, they expected the LECs to comply with the rules and provide unique ANI payphone digits. In fact, the Commission required the transmission of unique payphone coding digits at the same time it set forth its payphone compensation rules.²³ As a result, prepaid phone card providers implemented costly upgrades to their networks and administrative systems that allowed them to recover payphone costs based on the reasonable expectation that LECs would be providing unique payphone coding digits. It was not until one week prior to the effective date of coding digit requirement that LECs publicly disclosed that they would not comply with the

²¹ Reconsideration Order at ¶ 64.

²² Second Bureau Waiver Order at ¶ 90.

²³ Payphone Order at ¶ 98; Reconsideration Order at ¶ 64.

Commission's rule, and not until the same day as the rule was to become effective that the Bureau waived the rule. Thus, contrary to the Bureau's reasoning, prepaid phonecard providers had absolutely no notice that they would be paying payphone compensation without a reasonable way to recover these new costs from their own customers.

15. The Second Bureau Order will place prepaid phonecard providers in an untenable competitive position and dramatically harm consumer interests. First, without real-time access to accurate payphone identification, prepaid carriers are simply unable to assess payphone compensation charges on their customers making payphone calls. Since prepaid services are not billed, there is only once chance to prepaid carriers to pass these costs through to their customers -- at the time of call completion -- and this cannot occur without knowing which calls are payphone-originated. Second, the only alternative for prepaid providers is to increase rates for all end users, whether or not calls are originated from payphones. This is not only inconsistent with the Commission's traditional policy that telecommunications costs should be recovered from the cost-causers as, but more importantly is decidedly anticompetitive. Because prepaid services are extremely low priced, and do not include the surcharges routinely applied to calling card and "0+" services, they compete not only with these "travel" services but also with ordinary "1+" long-distance services. With an average prepaid call amounting to approximately \$1.31, the \$0.284 charge -- if required to be applied to all calls -- will destroy the narrow profit margins in this burgeoning competitive market and impede the growing competitiveness of prepaid phonecard services.

16. In sum, the Bureau Order cannot be harmonized either with the Commission's market-based "carrier-pays" methodology or with the rationale for the original waiver of the payphone-specific coding digit requirement. The Bureau's justification -- that harm to prepaid providers is less important than harm to PSPs -- is both incorrect and demonstrably untenable. Whether prepaid carriers were on "notice" of payphone compensation does not change the fact that, without the ability to identify payphone-originated calls in real time, prepaid carriers will -- alone among all IXC's -- be prevented from passing on these costs to their customers making payphone calls. This anticompetitive and anti-consumer result, bereft of any logical or policy basis, cries out for Commission reversal.

17. As relief, ITA proposes, very simply, that to the same extent a PSP enjoys a waiver of the coding digit obligation, prepaid carriers should be waived from their obligation to remit payphone compensation for those phones. ITA does not seek a blanket exemption from payphone compensation or a waiver of remitting compensation for PSPs that comply with the Commission's rule and actually transmit payphone-specific ANI II digits. Nor do we ask that the Commission provide a compensation exemption of any greater scope or duration than the correlative waiver of the coding digit requirement. ITA seeks only fair and balanced treatment, because prepaid carriers are the only firms prevented by the waivers from recovering payphone charges from payphone callers.

18. In its January 1998 reply comments, ITA also addressed concerns raised by some PSPs that they were "innocent" victims of LEC central office configuration delays. To the extent PSPs are innocent parties, however, so are prepaid providers, and

the Bureau's decision to favor one industry segment over another is consequently nonsensical. Furthermore, ITA proposed that the Commission act directly against the LECs to create a financial incentive for their support of PSP compliance, in other words force the LECs to provide the capability for payphone-specific information to independent payphone providers, as well as for LEC phones. ITA explained that:

The solution to this dilemma, ITA believes, is for the Commission to place the burden of solving the technical issues on the shoulders of those who are responsible for the lack of accurate ANI information digits—the LECs themselves. Unless and until LECs have a financial incentive to supply payphone-specific coding digits to independent PSPs, they will have no reason to accelerate their work in this area, and the waiver issues being litigated here will surely persist for many more months, if not years. Accordingly, ITA recommends that the Commission consider alternative compensation rules that would create an incentive for LECs to provide independent PSPs with this crucial information. Specifically, ITA proposes that LECs should be barred from collecting payphone compensation charges from prepaid payphone card providers—even as to LEC-owned payphones that are not subject to the Coding Digit Waiver Order—until they supply payphone-specific coding digits to all independent PSPs.

Reply Comments of ITA at 10 (filed Jan. 23, 1998)(emphasis supplied). While the Bureau rejected this proposed relief without discussion, it is the only remedy that will ensure the short-term provision of accurate payphone-specific information by the maximum number of LEC and non-LEC payphones possible.

II. THE BUREAU ORDER VIOLATES THE COMMISSION AND APA PROCEDURAL SAFEGUARDS AND POLICY

19. The Bureau's extension of the coding digit waiver is procedurally suspect, and inconsistent with prevailing APA and Commission requirements for public comment in rulemaking proceedings. While the Commission is traditionally entitled to grant waivers on "good cause" shown, "emergency" exceptions to public comment

requirements are, and should remain, a rare occurrence. The Bureau's procedures in this proceeding stand these basic principles on their head.

20. ITA does not challenge the October 1997 grant of the First Bureau Waiver Order on the Bureau's own motion. Because the Commission learned of problems implementing the coding digit requirement only weeks before the deadline, there was no time to conduct public comment. And, the Bureau remedied this procedural defect by seeking public comment on the underlying waiver petitions. However, despite the fact that it had five months to prepare, the Bureau used the same last-minute process -- this time with no public comment opportunity whatsoever -- for the Second Waiver Order.

21. Plainly, there was no need to wait until the day the initial waiver expired to resolve ITA's reconsideration petition. More importantly, however, waiting until the last minute once again prevented the Bureau from receiving any public comment on whether the waiver should be extended. Extension of the waiver past March 1998 was a matter on which the Bureau never sought public comment, and which it resolved based entirely on the ex parte submissions of affected PSPs and LECs. Not even the largest IXC's were asked whether the representations of the LEC ANI Coalition were correct. Thus, there is a serious question whether the key factual assertion underlying the waiver extension (that more than 85% of all payphones currently supply accurate ANI II digits) is true. ITA's data indicate that less than 60% of payphones transmit accurate payphone-specific coding digits.


22. Not only did the Bureau act without public comment, but it acted without any formal petition from the major LECs for an extension of the waiver. The Bureau

received a letter from the LEC ANI Coalition that it "treated" as a petition, but did not require the ordinary predicate to waiver of a Commission rule -- a petition for waiver from the affected parties. This is merely another indication, on this record, that the Bureau was not addressing payphone issues dispassionately, but rather overreaching in order to satisfy the demands of LECs and PSPs. Whether or not that is correct in fact, the procedural irregularities associated with these waivers present an appearance of potential impropriety and APA violations that can and should be cured by close review of these issues by the full Commission.

CONCLUSION

For all the foregoing reasons, the Commission should vacate in part the March 9, 1998 Bureau Order, grant ITA's reconsideration petition, and hold either that (1) pre-paid phonecard carriers are not required to compensate PSPs for payphone calls that, pursuant to waiver, are not transmitted with accurate, payphone-specific coding digits, or (2) LECs cannot collect payphone compensation charges from prepaid phonecard providers until they supply accurate, payphone-specific coding digits to all independent PSPs.

Respectfully submitted,



By: Glenn B. Manishin
Michael D. Specht, Senior Engineer
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300

Dated: April 8, 1998.

Counsel for the International Telecard Association

ATTACHMENT

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Before the
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In the Matter of)
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Implementation of the) CC Docket No. 96-128
Pay Telephone Reclassifications)
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PETITION FOR PARTIAL RECONSIDERATION

The International Telecard Association ("ITA"),¹ by its attorneys and pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, hereby petitions for reconsideration of the October 7, 1997 Order in this docket.² In this *Waiver Order* the Common Carrier Bureau, on its own motion and without public comment, granted a temporary, six-month waiver of the requirement, established in the *Payphone Orders*,³ that local exchange carriers ("LECs") and payphone service providers ("PSPs") transmit payphone-specific coding digits sufficient to allow real-time identification of "800" and access code calls originated from payphones.

In issuing the *Waiver Order*, the Common Carrier Bureau has overlooked the fundamental difference between prepaid phone card services and ordinary inter-exchange telecommunications services. The *Waiver Order* should not and cannot be

¹ Members of the Association that are Regional Bell Operating Companies ("RBOCs") have not participated in the development of this Petition.

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (released Oct. 7, 1997) ("Waiver Order").³

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Order on Reconsideration") (Continued on next page)

applied to allow PSPs to assess payphone compensation charges on prepaid phone card providers because, unlike other interexchange carriers, prepaid providers cannot recover payphone charges from their customers *without the ability to identify payphone calls in real-time*. Thus, the Bureau's assumption that a limited waiver "will not significantly harm any parties"⁴ is wrong. Prepaid providers, operating in perhaps the most competitive market in today's telecommunications industry, will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Consumers of these innovative services—including those calling from non-pay-phones—will necessarily face higher rates as well.

ITA therefore urges the Commission to preclude PSPs from assessing any per-call compensation charges on providers of prepaid services for the duration of the six-month waiver, in other words until adequate information is available, in real-time, for prepaid carriers to identify payphone calls and recover per-call payphone compensation charges from their customers. Only in this way can the interests of providers and consumers of prepaid card services be protected in light of the unique nature of prepaid services.

DISCUSSION

In 1996 the Commission held that to be eligible for per-call compensation beginning October 7, 1997, "each payphone" is "required to transmit specific payphone coding digits as part of their ANI . . . that specifically identif[ies] it as a payphone, not merely as a restricted line." *Waiver Order* ¶ 4. Just one week before that deadline,

(collectively "Payphone Orders"), *vacated and remanded in part, Illinois Public Telecommunications Assoc. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997).

⁴ *Waiver Order* ¶ 12.

however, several LEC and PSP organizations claimed that it would be technically infeasible to provide such ANI digits by the implementation date. Without public comment, the Bureau on its own motion granted a six-month waiver, until March 9, 1998, of the requirement “for those LECs and PSPs not yet able to provide transmission of such digits.” *Id.* ¶ 8.

The Bureau reasoned that PSPs should not be denied per-call compensation for an industry-wide problem because a delay in requiring payphone-specific coding digits will not harm interexchange carriers. Although the *Waiver Order* recognized that the absence of real-time ANI information makes it impossible for IXCs “to block those calls on a real-time basis,” *id.* ¶ 13, the Bureau pointed out that lists of payphone ANIs will still be available to IXCs, allowing them to “identify[] payphone calls for the purpose of determining the number of calls for which compensation is owed.” *Id.* ¶ 12. In short, because IXCs will be able to identify, and thus bill their customers for, per-call payphone compensation charges, the inability to engage in real-time blocking is not a matter of substantial concern.

This rationale simply does not apply to prepaid calling card services. Prepaid card services—which are growing exponentially and today account for an estimated 3.5 billion calls annually—are a highly competitive market segment that are completely different from ordinary interexchange services. Not only are price structures and rate levels (*e.g.*, no per-call surcharges, rates of \$0.19 per-minute and lower, “postalized” distance-insensitive rate structures) the most consumer-friendly in the industry, but prepaid services are paid for in advance, and thus do not involve any bill rendered to

subscribers. *As a consequence, the one and only time a prepaid card provider has to recover a payphone charge from its customer is at the time a payphone-originated call is placed.*⁵

What this means is that the inability to identify and/or block payphone calls, in real time, will significantly harm prepaid card providers, impede competition in this burgeoning market, and injure consumers. Without the ability to identify payphone calls and recover PSP charges when a call is placed, prepaid card providers will be forced either to (a) pay for such costs out of their already thin profit margins, or (b) increase rates for consumers for all prepaid calls, whether or not payphone-originated.⁶ Neither result is in the public interest.

Given the highly competitive nature of the prepaid card industry, no card provider can absorb charges of 28.4 cents per call and have its product remain economically viable. Many of the smaller providers and new entrants attracted to this market, where entry costs and barriers are very low, will be driven out of business. Moreover, because per-minute rates for cards already in circulation cannot be changed, prepaid providers will be forced to immediately increase per-minute rates, even higher than the average pro rate portion of the 28.4 cents, for prepaid calls whether or not

⁵ With payphone-specific ANIs, prepaid providers would be in a position to provide a customized announcement (with appropriate tariff modifications as necessary) to customers, disclosing that the card will be "decremented" a particular value or number of "units" to recover the payphone-assessed per-call charge. In the absence of real-time information, this is plainly not possible.

⁶ In addition to harms caused by the unavailability of ANI information digits in real time, prepaid card providers are also harmed when LECs provide inaccurate ANI information digits. For example, at least one LEC is sending ANI information digits that indicate a call is made from a payphone when the call is actually placed from a residential line with toll restrictions. In this case, the prepaid card providers may play an announcement to the customer advising them that a payphone charge will be deducted from their card even though the call is made from a residential line. This has already lead to numerous customer complaints and harmed prepaid card providers relationships with their customers. It also harms customers who are unknowingly are paying payphone charges even though they are placing calls from a residential line. Therefore, the Commission must not only ensure that ANI
(Continued on next page)

originated from payphones. This increase in prices will necessarily be imposed on consumers who would otherwise have the choice of avoiding payphone charges by using a non-payphone with their prepaid card. In sum, the lack of real-time ANI information will substantially injure competition, prepaid providers and consumers.

The Bureau's assumption that a limited waiver "will not significantly harm any parties" is wrong. Prepaid providers will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Consumers of these innovative services—including those calling from non-payphones—will necessarily face higher rates as well. ITA therefore urges the Commission to preclude PSPs from assessing any per-call compensation charges on providers of prepaid services for the duration of the six-month waiver, in other words until adequate and accurate information is available, in real-time, for prepaid carriers to identify payphone calls and recover per-call payphone compensation charges from their customers. Only in this way can the interests of providers and consumers of prepaid card services be protected in light of the unique nature of prepaid services.

information digits are provided, but that they are the correct ones before enabling PSPs to collect per call compensation.

CONCLUSION

For all these reasons, the Commission should modify the *Waiver Order* to preclude PSPs from assessing any per-call compensation charges on providers of prepaid card services until accurate payphone-specific coding digits are transmitted from each payphone.

Respectfully submitted,



By: _____
Glenn B. Manishin

Michael D. Specht, Senior Engineer
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300
202.955.6460 fax

Dated: November 6, 1997.

Counsel for the International Telecard Association

ATTACHMENT

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-128
Pay Telephone Reclassifications)	
and Compensation Provisions of the)	
Telecommunications Act of 1996)	

REPLY COMMENTS OF ITA

The International Telecard Association ("ITA"),¹ by its attorneys, respectfully submits these reply comments in response to the Commission's public notice² of three petitions that seek waiver of the requirement, established in the *Payphone Orders*,³ that local exchange carriers ("LECs") and payphone service providers ("PSPs") transmit payphone-specific coding digits sufficient to allow real-time identification of "800" and access code calls originated from payphones.

DISCUSSION

The Commission should deny, at least in part, the requested waivers. Granting them will result in significant harm to prepaid card providers. In the absence of accurate real time ANI information digits identifying that a call was placed from a payphone, the Commission should not and cannot allow PSPs to assess payphone

¹ Members of the Association that are Regional Bell Operating Companies ("RBOCs") have not participated in the development of these comments.

² FCC Public Notice, *Pleading Cycle Established for Petitions to Waive Payphone Coding Digit Requirements*, CC Docket No. 96-128, DA 97-2274, Oct. 20, 1997 ("Public Notice").

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Order on Reconsideration") (Continued on next page)

compensation charges on prepaid phone card providers. Unlike other interexchange carriers, prepaid providers cannot recover payphone charges from their customers *without the ability to identify payphone calls in real-time*. Prepaid card providers, operating in perhaps the most competitive market in today's telecommunications industry, will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Furthermore, the Commission must not only ensure that ANI information digits are being provided in real time, but that those digits are accurate. Failure to ensure both that ANI information digits are accurately provided will result in customer confusion, inappropriate charges to consumers, harm prepaid card providers financially and damage prepaid providers relationship with their customers.

In 1996 the Commission held that to be eligible for per-call compensation beginning October 7, 1997, each payphone is required to transmit specific payphone coding digits as part of their ANI that specifically identifies it as a payphone, not merely as a restricted line. Just one week before that deadline, however, several LEC and PSP organizations claimed that it would be technically infeasible to provide such ANI digits by the implementation date. Without public comment, the Bureau on its own motion granted a six-month waiver, until March 9, 1998, of the requirement "for those LECs and PSPs not yet able to provide transmission of such digits."⁴ ITA has separately

(collectively "Payphone Orders"), *vacated and remanded in part, Illinois Public Telecommunications Assoc. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997).

⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128, rel. Oct. 7, 1997 ("Waiver Order").